STATE OF CALIFORNIA GRAY DAVIS, Governor

### PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE SAN FRANCISCO, CA 94102-3298



April 10, 2001

TO: PARTIES OF RECORD IN CASE 00-03-017 DECISION 01-04-013, MAILED APRIL 10, 2001

On March 9, 2001, a Presiding Officer's Decision in this proceeding was mailed to all parties. Public Utilities Code Section 1701.2 and Rule 8.2 of the Commission's Rules of Practice and Procedures provide that the Presiding Officer's Decision becomes the decision of the Commission 30 days after its mailing unless an appeal to the Commission or a request for review has been filed.

No timely appeals to the Commission or requests for review have been filed. Therefore, the Presiding Officer's Decision is now the decision of the Commission.

The decision number is shown above.

/s/ LYNN T. CAREW Lynn T. Carew, Chief Administrative Law Judge

LTC:hkr

Attachment

# Mailed 4/10/2001

#### ALJ/XJV-POD/hkr

Decision 01-04-013 April 10, 2001

#### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Carol Fisch,

Complainant,

VS.

Case 00-03-017 (Filed March 9, 2000)

Garrapata Water Co., Inc.,

Defendant.

#### **OPINION RESOLVING COMPLAINT**

<u>William B. Daniels</u>, Attorney at Law, for Carol Fisch, complainant.

<u>Donald M. Layne</u>, Attorney at Law, for Garrapata Water Co., Inc., defendant.

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#### OPINION RESOLVING COMPLAINT

#### **Summary**

We resolve the complaint filed by Carol Fisch (Fisch) against Garrapata Water Co., Inc. (Garrapata) by concluding that Fisch's property is within Garrapata's service area but that the water line spanning Garrapata Creek is nonstandard because it does not comply with the Tariff Rule 15 main extension requirements incorporated in Tariff Rule 16. We assign responsibility for outstanding and future repairs to the water line equally between Fisch and Garrapata. We conclude that neither law nor equity warrants imposing the cost of these repairs on Garrapata's remaining customers, however, and accordingly, we prohibit the utility from recovering its share of this cost from ratepayers. We direct Garrapata to prepare a preliminary study of the feasibility of extending its Highway 1 main across Garrapata Creek and to submit the study to the Commission's Water Division.

# **Procedural Background**

Fisch filed this complaint on March 9, 2000. Garrapata filed a timely answer on May 8 and both parties appeared at a prehearing conference on June 16. On June 21, Commissioner Henry M. Duque, the assigned Commissioner, issued a scoping memo as required by Pub. Util. Code § 1702.1. The scoping memo identified issues for hearing, set a procedural schedule, and designated Administrative Law Judge (ALJ) Vieth the presiding officer for this case.<sup>1</sup>

Footnote continued on next page

<sup>&</sup>lt;sup>1</sup> Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code and all citations to rules refer to the Rules of Practice and

Evidentiary hearing occurred in Monterey on September 20 and a briefing schedule, later revised in part, was set that day. Fisch timely filed an opening brief on November 3. Garrapata's brief, served on complainant by mail November 1 and faxed to the ALJ that morning, was not received at the Commission until November 6; at the ALJ's direction, the brief has been accepted for filing. Upon the filing of concurrent reply briefs on November 17, the case was submitted for decision.

By ruling on December 4, the ALJ set aside submission and requested the Commission's Water Division to direct a staff engineer to inspect the meter box on Fisch's property in the company of representatives of both parties and to submit a report, with copies to the parties. Neither party objected to evidentiary use of the report or requested additional proceedings. By ruling on January 10, 2001, the ALJ received the report in evidence and resubmitted this case.

## **Factual Background**

Garrapata is one of the smallest public utility water companies subject to this Commission's regulatory jurisdiction.<sup>2</sup> The utility currently provides water service on a flat rate basis to Fisch, 42 other residential customers, and two commercial customers in a rural portion of Monterey County about ten miles south of Carmel. The service area includes land on both sides of State Highway No. 1 (Highway 1), which runs generally parallel to the California coastline in

Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

<sup>2</sup> The utility's summary of earnings, based upon rates authorized in the recent general rate case (GRC) proceeding, includes the following annual estimates: gross revenues, \$35,480; expenses \$29,290; and net revenue, \$6,190. (Commission Resolution W-4220, dated September 7, 2000, resolving the GRC.)

that area. Fisch's property is located to the west of Highway 1. The Pacific Ocean forms part of the western border of her property and Garrapata Creek, which flows under the Highway 1 bridge westerly through a steep canyon into the Pacific, marks part of the southern border.

In July 1962 the Commission granted Garrapata a certificate of public convenience and necessity (CPCN) and authorized the establishment of metered rates. (Decision (D.) 63944 [the CPCN decision].) A subsequent decision, which resolves disputes over a main extension contract executed in 1974, reviews the historical context in which the CPCN issued, stating that Garrapata "was formed in 1962 by a group of doctors to provide water service to lands which they owned and were selling." (D.83-03-011 [1983 main extension decision], mimeo. at 6.)

In September 1974 the Commission authorized Joel M. Morris (Morris) to acquire the utility from the doctors. (D.83461 [the 1974 transfer decision].) Following Morris' death in 1978, his wife Barbara Morris, now Barbara Morris Layne (Mrs. Layne), acquired the utility. She is Garrapata's president and sole shareholder. Her second husband, Donald M. Layne (Layne), is the utility's vice-president, lawyer, operations manager and, at times, its plumber.<sup>3</sup>

In 1987, the Commission directed Garrapata to switch to the present flat rate schedule. Commission staff recommended this conversion to avoid the cost of refurbishing and installing meters on the system. (D.87-11-021 [the 1987 GRC decision], mimeo. at 12.) It appears Garrapata had not been reading meters or billing on the basis of metered usage but instead had been assessing customers

<sup>&</sup>lt;sup>3</sup> Layne testified that he and Mrs. Layne were married in 1981 and that he has been associated with Garrapata since the early 1980s.

the annual minimum charge set out in its metered rate schedule, resulting in an ongoing operating loss.

#### **Parties' Contentions**

In essence, Fisch argues that (1) her property, purchased in 1998, lies within Garrapata's service area and (2) the 1½-inch water line that traverses Garrapata Creek to provide water to her property is a water distribution main which Garrapata must maintain.<sup>4</sup> As a consequence, Fisch contends that (3) the utility may not shut off water to her property for her failure to keep the water line in repair and (4) she is not liable for the \$396.39 in repairs made on November 30, 1999.<sup>5</sup> Though the complaint raises several other issues about utility management and service quality (e.g., "[t]he Utility is not sufficiently capitalized and competently managed to assure safe and reliable water for the customers of the Utility"), the scoping memo referred these issues to the recent GRC and they were addressed in that proceeding.

Garrapata admits that it has provided water service to the property since 1964. However, Garrapata asserts that the property is outside the service area (i.e., that water always has been provided as an extra-service territory accommodation) and at any event, that the water line at issue is not a water main but a private service line which Fisch must keep operable.

Though the utility now bills its customers in accordance with its flat rate tariff structure, each party claims that different meters on the water system

<sup>4</sup> Ex.9, attached to this decision as Appendix A, illustrates the location of the water line at issue and the geographical orientation of Fisch's property.

<sup>&</sup>lt;sup>5</sup> Some \$4,000 of repairs made in the spring of 2000 were paid by her realtor and are not at issue in this case.

establish the point of service. Fisch relies on the existence of a meter box north of Garrapata Creek near her house. Garrapata relies on its long-term use of a meter and shut off valve south of Garrapata Creek for detecting leaks in the water line (which lies to the north) and when necessary, cutting off the water supply to Fisch's property.

## **Preliminary Procedural Considerations**

#### 1. Presentation of Garrapata's Case

We begin our analysis by considering Garrapata's assertion that it was afforded insufficient time to present its defense. (Garrapata opening brief at 1-2; reply brief at 1.) The transcript reflects that evidentiary hearing commenced at 9 a.m. as scheduled. The ALJ reminded both parties that as previously noticed, the hearing room was available to them only until 3 p.m. that day; she then proceeded to ascertain the parties' time estimates. Layne, who served as the utility's counsel in this proceeding stated:

I plan to testify. Mrs. Layne will testify briefly. [colloquy omitted.] And I would think that I can be all done in less than – substantially less than an hour. (Tr. 4:5-12.)

When examination of Fisch, complainant's final witness, concluded at 11:45 a.m., the ALJ granted Layne's request for a lunch break until 1:15 p.m. The hearing resumed at that time and Layne commenced Garrapata's defense shortly thereafter. At no time did Garrapata move to continue the hearing and, as scheduled, the ALJ adjourned the hearing at 3 p.m. Garrapata was permitted to present its defense in the manner it chose within the timeframe it requested. Garrapata's rights have not been abridged.

## 2. Garrapata's Exhibits

Garrapata also argues that the ALJ erred in declining to receive in evidence five of the eight exhibits which Garrapata had marked for identification

and then offered in its defense at hearing.<sup>6</sup> The ALJ ruled that Layne, who testified as Garrapata's primary witness, had failed to authenticate each of the five documents.

Garrapata's opening brief argues that the ALJ erred because the documents, all found in old business files of the utility, are ancient documents and therefore, presumptively genuine. Garrapata asserts:

Counsel for the utility has spent many hours gleaning through old files to try to help the Commission understand what probably happened in 1966 when Morely Baer built the house now owned by Fisch. None of the proffered exhibits is critical but they are each like pieces of a puzzle. Taken together they show that the company was a bankrupt, nonexistent mess and it must have been Morely Baer who installed the line in 1966 and set a meter where thought [sic] it was appropriate without regard to where the legal point of service was. (Garrapata opening brief at 3.)

#### The exhibits in question are:

• Ex. 102--One-half page memo, dated March 16, 1967 to Dr. R. Wesley Wright from Dr. H. Christian Zweng (states "I am returning the billing from ... Dewar [et al] to you ...") attached to 3 page letter, dated March 13, 1967 to Dr. R. Wesley Wright from Rodrick L. Dewar of Dewar, Romig and Curtis, Law Offices (states "[t]his letter is a progress report concerning the rather complicated affairs of Garrapata Water Company ..." and concludes "I am enclosing my statement ..."). Both appear to be original, typewritten documents. The letter recounts Garrapata's financial status following the death of Virginia Neilson, its original Secretary-Treasurer, but

<sup>&</sup>lt;sup>6</sup> Garrapata's opening brief states that the ALJ denied admission of six exhibits. However, review of the transcript shows that the ALJ declined to admit five exhibits (Ex. 102, Ex. 104, Ex. 105, Ex. 106, Ex. 107) but did admit three (Ex. 100, Ex. 101, and Ex. 103).

makes no mention of the Morely Baer property, specifically or of meters, generally.

- Ex. 104--One page document entitled "Garrapata Water Company Memorandum on Needed Work" (bottom of page marked "1 of 3"); dated March 26, 1968, name "Clayton B. Neill" typed below date (states "All water use should be metered. This will require the purchase of 15 meters ..."). Appears to be an original carbon copy of the first page of a three-page typewritten document. Makes no mention of the Morely Baer property nor indicates which properties are or are not metered.
- Ex. 105--Map entitled "Water Distribution System Garrapata Water Co, Inc.," bears notation "Neill Engineers, April 1962, revised March 1963." Photocopy of what appears to be an engineering drawing, with various handwritten annotations, of Garrapata's mains and some service lines, offered by Garrapata to corroborate Layne's testimony about the location of the northern end of the old Highway 1 main.
- Ex. 106--Map entitled "Garrapata Water Co. service area schematic," bears notation "Date 1.8.86" but does not indicate who drew the map. Photocopy. Legend includes three columns entitled "existing hookups"; "approved new hookups"; "potential hookups" and lists the Bloom parcel (which Fisch now owns) as a hookup. Map shows the service area boundary passing through the Bloom parcel.
- Ex. 107-–Map entitled "Garrapata Water Company Service Area," bears notation "Drawn by J.L.B. 7/71." Photocopy. Legend distinguishes four different tracts of land marked with four different shadings: service area filed March 1963;

service area – filed Nov. 1970; requested service extension by Advice Letter 6; and area being served, but not filed.<sup>7</sup>

As Witkin explains, former Code Civ. Proc. § 1963 did create a statutory presumption that documents more than 30 years old were genuine. However, that statute has been superceded by Evid. Code § 643, which narrows application of the presumption to "a deed or will or other writing purporting to create, terminate, or affect an interest in real or personal property." (See Witkin, *1 California Evidence 4th Ed*, p. 1002 [Hearsay §§ 292-293].)

Ex. 105 and Ex. 106 are less than 30 years old and the other, older exhibits either do not affect interests in real property at all or do so only tangentially. While it is true that evidence in administrative hearings generally is not subject to the restrictive rules which govern admission in trials, it must be both "relevant and reliable." (See Witkin, *1 California Evidence 4th Ed*, p. 61 [Introduction § 55].) This Commission's own rule states "the technical rules of evidence ordinarily need not be applied" though "substantial rights of the parties shall be preserved." (Rule 64; see also § 1701(a), which authorizes the Commission to adopt procedural rules.)

Fisch argues that the ALJ correctly denied admission of these five exhibits because, among other things, they constitute an improper effort to impeach her testimony. Fisch is incorrect on this point, however, since Layne did not seek to introduce the exhibits during cross-examination of Fisch but rather, offered them during Garrapata's direct case as circumstantial evidence corroborative of the oral testimony of Garrapata's witnesses (himself and Mrs.

<sup>&</sup>lt;sup>7</sup> Advice letter 6, filed in 1971, sought to include certain land east of Highway 1. Advice Letter 6 was rejected but the Commission's 1983 main extension decision formally extended Garrapata's service area on the eastward side.

Layne). We note, moreover, that Fisch's counsel had an opportunity to cross-examine Layne at the conclusion of his direct testimony, to conduct voir dire on all the exhibits Layne offered in Garrapata's defense, and to cross-examine Mrs. Layne's limited testimony.

As the ALJ indicated, Layne generally failed to establish who prepared these documents or for what purpose, but merely offered his own speculation about the evidentiary value of each one. We confirm the ALJ's determination to deny admission of Ex. 102, Ex. 104, and Ex. 106. With respect to Ex. 102, we conclude that though we might overlook authentication issues for the purposes of an administrative hearing, the document is not relevant to determination of the narrow issues before us. We have no need of circumstantial evidence of Garrapata's financial and managerial disorder in the 1960s and early 1970s since prior Commission decisions establish that reality persuasively. We reject Ex. 104 and Ex. 106 for inadequate authentication and because we lack other means of favorably assessing the credibility, purpose, and relevance of these documents. Garrapata's case is in no way prejudiced by exclusion of these documents.

We admit the Ex. 105 and Ex. 107 maps for limited evidentiary purposes, however. Commission files establish that in compliance with the CPCN decision, Garrapata filed a distribution system blueprint by Neill Engineers that resembles Ex. 105 in all respects but for the handwritten annotations. We receive Ex. 105 in evidence solely as corroboration of other evidence that Garrapata's Highway 1 main ends south of the Garrapata Creek bridge on Highway 1. Since other evidence supports the authenticity of Ex. 107, we receive it in evidence for its circumstantial, explanatory value with respect to certain aspects of Garrapata's present and former filed service area maps. As we discuss in greater detail below, while Ex. 107 is relevant to our discussion of the

location of Garrapata's service area border, ultimately we conclude that Ex. 107 is not determinative of the issue.

Though we reverse the ALJ's ruling with respect to Ex. 105 and Ex. 107, we need not set aside submission and ask for another round of briefs, since other, adequate means exist to protect the rights of the parties. First, we will not strike the references to these exhibits, and the legal arguments about their evidentiary value, which one party or another has already made in its opening or reply briefs. Second, we will permit any party which concludes that the presiding officer's decision (POD) has failed to assign appropriate evidentiary weight to either or both of these exhibits to argue, in its appeal of the POD under Section 1701.2, why the Commission should make a different evaluation and to what result.

#### **Discussion**

#### 1. Tariff Rule 16

Garrapata's Tariff Rule 16, entitled "Service Connections, Meters, and Customer's Facilities" governs the respective responsibilities of utility and customer for installation and maintenance of portions of the water system. The rule has been a part of Garrapata's tariff since first filed in 1963. Utility and customer responsibilities differ depending upon whether the customer's property is inside the service area or beyond its boundaries; if within the service area, whether the location is urban or rural, as in this case; and whether the service expansion falls within the main extension requirements of Tariff Rule 15. We reproduce Tariff Rule 16, in relevant part, in Appendix B.

## 2. The Service Area Boundary

We begin by considering whether or not Fisch's property is within Garrapata's service area. The current service area map is included in Garrapata's

tariff book as Revised Cal. P.U.C. Sheet No. 96-W (Sheet 96-W). This map, submitted as Advice Letter 10 under Mrs. Layne's signature, became effective on April 6, 1986. A hand drawn, red pencil line delineates the service area border on the map; the Fisch property is entirely within that red line, in the northwest corner of the service area.

Garrapata argues that the red boundary line on Sheet 96-W was drawn erroneously and that the map should not have been filed, since the correct northern boundary lies to the south, as described in the CPCN decision.8 However, Grover Meyrose, a local surveyor whom Fisch called as an expert witness, surveyed and plotted the acknowledged 1962 boundary—undisputedly, as illustrated in Ex. 17, the 1962 boundary passes through her house.

Garrapata contends, nonetheless, that the original house was built north of the 1962 service area boundary and that the portion which straddles that boundary is a subsequent addition. Both of the Laynes testified the Fisch property always has been an extra-service territory accommodation. Layne pointed out that the tract of land in the northwest corner on Sheet 96-W (i.e., located inside the red line but north of the 1962 boundary) bears a unique cross-hatching, which also appears in Ex. 107 (the map marked "Service Area, drawn by J.L.B. 7/71"). While Sheet 96-W does not explain this cross-hatching, Ex. 107 indicates that it represents an "area being served, but not filed."

Review of the cancelled tariff sheets archived at the Commission does not reveal that Ex. 107 was ever on file as a service area map. Sheet 96-W cancelled and replaced the prior service area map, Cal. P.U.C. Sheet No. 94-W

<sup>&</sup>lt;sup>8</sup> That description reads: "On the north by the north line of Section 31, T17S, R1E, and Section 36, T17S, R1W." (D.63944, mimeo. at 1.)

(Sheet 94-W). Sheet 94-W was filed as Advice Letter 9 in compliance with the 1983 main extension decision and bears Mrs. Layne's signature. It became effective on April 13, 1983, and is the first service area map to show service of any kind beyond the northern border described in the CPCN decision. The northwestern portions of Sheet 94-W and Sheet 96-W are identical—the same unique cross-hatching appears inside a hand-drawn line. The legend on Sheet 94-W describes this hand-drawn line as representing the "total area served" while the Sheet 96-W legend identifies the line as representing the "boundary of the service area." Other portions of the two service area maps differ in ways immaterial to the issues raised in this case.

We draw several conclusions. First, at least a portion of the Fisch property has been part of Garrapata's filed service area since the utility's formation. Second, while there is some evidence to support the Laynes' testimony that service to the Fisch property began as an extra-service territory accommodation, it is circumstantial and cannot substitute for the lack of any documentary proof. Garrapata has produced no written agreement to establish the existence of an extra-service territory service arrangement, nor is such an arrangement noted anywhere in the utility's tariff, in any advice letter, or in any Commission decisions concerning Garrapata. No former tariff schedule established a metered rate for customers outside the service area, nor is there a flat rate for such customers now. Garrapata's Tariff Rule 4, filed as part of Advice Letter 1 in 1963, requires a contract for service under non-standard rates or conditions. For all of these reasons and particularly in the face of Fisch's reliance, Garrapata may not disavow, for the purpose of assigning greater responsibility to Fisch under Tariff Rule 16, the 1986 service area map filed as Sheet 96-W.

## 3. Point of Delivery of Service

Since we have determined that Fisch's property is within Garrapata's service area, and since the area is rural, Tariff Rule 16.A.1.a.(2) governs utility responsibilities with respect to establishment of a service connection, and 16.A.2.a. and 16.A.2.b. govern customer responsibilities. (See Appendix B.) Under the tariff, the location of a service connection determines "the point of delivery of water service to the customer." (Tariff Rule 16.A.1.b.)

#### 3.1 Fisch's Showing

Fisch contends that the point of delivery of service is the meter box near the south side of her house. Ex. 5 is a photograph of the meter box and appears to show a concrete box resting entirely above ground on a downward slope. Though Fisch testified that she observed the meter box when she walked the property with the caretakers who had been managing it for at least 12 years prior, she did not inquire if the meter was functioning since she knew that Garrapata provided water to the property on a flat rate basis. She testified that she did not inquire which piping belonged to the property or make any other inquiries about the water distribution system serving the property. Fisch also testified that she had no discussions with other customers of Garrapata, other than her realtor, and was "not really" aware of the small size of the utility at the time she purchased the property. (Tr. 86.) Fisch does not live on the property full time but uses it as a "1031 exchange investment income property." (Tr. 87.)

Though the utility now has a flat rate structure, Fisch's brief notes that Garrapata's 1962 CPCN application proposed metered rates and points to three Advice Letter (AL) filings in Garrapata's tariff book which transmitted the original Schedule No. 1A for "Annual General Metered Service" (AL 1, dated March 22, 1963) and two subsequent updates (AL 4, dated September 15, 1970; AL 7, dated June 23, 1975). Fisch then argues: "It is logical to assume that the

meter shown in Complainant's Exhibits 4 and 5 was placed at its location to meter service to Complainant's parcel and to fulfill the mandate of [Tariff] Rule 16.A.1.a.(2)." (Fisch opening brief at 8.) In her view, this location provides a "convenient" service connection in accordance with Tariff Rule 16.A.1.a.(2); more particularly, no other location is convenient to her. Fisch does not address the Tariff Rule 16.A.2.b. requirement that a customer's piping provide the utility with easy access from its existing distribution system and require minimal extension of the existing distribution main.

### 3.2 Garrapata's Defense

Garrapata counters that the existence of a meter on Fisch's property fails to establish that site as the original point of delivery of service or prove that the water line crossing Garrapata Creek is a utility main. Arguing that the utility was in financial and operational disarray at the time Morris acquired it in 1974, Garrapata appears to suggest those facts limit its ability to prove, undisputedly, who installed either the meter box or the water line, and under what terms. Mrs. Layne testified that Morely Baer, who built the original house on what is now Fisch's property and owned it at the time Morris acquired the utility, acknowledged the water line to be his private service line and spoke with her about its frailty. Layne stated that he made repairs on the water line in the late 1980s for Mrs. Bloom, who owned the property then and paid for the parts. Layne contends that considering the extreme geography of Garrapata Creek, the only reasonable interpretation is that the water line is a private service line.

The Garrapata system never actually was operated as a metered system during the 1960s and 1970s, according to the testimony of both of the Laynes. Mrs. Layne stated that though some meters had been installed before

Morris acquired the utility, as far as she knew they were never read; subsequently, those that malfunctioned were eliminated. Layne testified that he installed a number of meters on the system in the 1980s, including one at the southern end of the water line, not to meter water usage for rate calculation but to serve as leak detection devices. Layne stated he had no knowledge of the meter near Fisch's house until after Fisch purchased the property and never read it or used it for any purpose.

#### 3.3 An Equitable Resolution

With one exception (Meyrose), the witness testimony in this proceeding tends to yield more heat than light. As is readily apparent from the two preceding sections, some of the testimony is hearsay, some of it is speculation, and much of it is self-serving. We consider next Ex. 200, the report the ALJ requested from the Water Division's staff engineer after hearing was adjourned. Ex. 200 supplements the factual information provided at hearing about the meter on Fisch's property. The meter box is not sited in the ground but rests over the top of a 1½-inch galvanized water pipe leading to Fisch's house. The location of the meter box is approximately 200 feet east of the house and about 50 feet west of the point where the 1½-inch galvanized water pipe intersects with the 1½-inch water line that comes up from Garrapata Creek. Lifting the meter box up and setting it aside, the staff engineer found a ¾-inch, nonfunctioning, brass water meter which he estimated to be 25 years old, perhaps older, and which appeared to have been in its present position for a considerable period of time. There are no valves at or in the vicinity of the meter.

Thus, Ex. 200 establishes that someone, at some time in the past, installed a water meter in the piping that carries water to Fisch's house. As noted previously, Garrapata admits to serving the Fisch property since 1964;

Fisch's complaint states the original house was built in 1965. Considering the small size of the utility system, its capacity and the limited number of service connections in 1962, the water service to Fisch's property some two years later could not have occurred without the utility's knowledge. Presuming then that the meter and meter box represent the service connection and therefore, the point of delivery of service, it does not appear that their placement complies with the requirements of Tariff Rule 16 in at least two respects.

First, the meter and meter box are not located at the point where the 1½-inch galvanized customer piping and the water line at issue connect (which would seem a more standard placement), but 50 feet to the west, nearer Fisch's house. Second, a much more major concern is the nonstandard siting of the water line that spans Garrapata Creek.

From the place it connects with the 1½-inch galvanized pipe, the water line runs easterly across Fisch's property to Highway 1. Garrapata's Highway 1 water main does not reach that far north-–it ends south of Garrapata Creek. Thus, the water line continues along Highway 1 a short distance, and in the vicinity of the north end of the Highway 1 bridge, drops some 200 hundred feet down the canyon wall on the north side of Garrapata Creek. The water line spans the creek bed, continues up the south bank, and now leads to one of four new meters where it taps into a new, 4-inch main in the utility easement along Highway 1 south of Garrapata Creek. The total distance on the ground between the two metered points is approximately 900 feet, though Garrapata

acknowledges responsibility for the southern-most 200 feet.<sup>9</sup> The water line does not serve any other property.

Clearly, as Fisch argues, at least half of the water line (all the pipe located in Garrapata Creek canyon) is not readily accessible to her. Nor is it readily accessible to anyone else. This reality, however, and the parties' arguments about it, masks the greater problem—a mutually convenient interconnection does not exist because, in 1964, when Fisch's property was connected to Garrapata's distribution system, the customer and utility failed to build a main extension across the Highway 1 bridge. The water line that scales the canyon and runs above the creek bed is sub-standard. The pipe is routinely damaged during floods and, as noted above, its location is precarious and difficult to reach. Layne testified that leaks in the water line drain quickly

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<sup>&</sup>lt;sup>9</sup> Garrapata recognizes responsibility for the last 200 feet of the water line because Layne added that much when, in the course of replacing about 600 feet of main around Thanksgiving 1999, he relocated further south the point where the water line and main interconnect. Layne testified that he installed a new meter (to serve as a leak detector) at this interconnection and installed three other meters nearby. One of the meters marks the new main interconnection for the first house south of Garrapata Creek (referred to as the "Dick Stein" property) and the other two mark future interconnections for unserved parcels the Laynes own. Before Thanksgiving 1999, the water line interconnected with an old, 2-inch main in the backyard of the Dick Stein property, close to the interconnection for that property. At some point the Dick Stein property was fenced and utility access to both interconnections became more difficult.

<sup>&</sup>lt;sup>10</sup> We note that the 1 ½-inch water line does not meet current specifications in General Order (GO) 103. These specifications include a 6-inch diameter minimum for new mains and the burial of both mains and customer piping, or where that is impossible, other secure means of installation to ensure the safety and integrity of the system. We recognize that GO 103, which has been amended or corrected at least nine times since it was first adopted in 1956, does not require mandatory replacement to update facilities which are otherwise safe and economically useful. However, GO 103 has always focused on system safety and integrity and the fundamental instability of the water line at issue is well-documented on this record.

enough to risk the water system's integrity and the imposition of State Water Control Board penalties for overdraft.

Fisch apparently misconstrues Tariff Rule 16 to require the utility to extend its water main, at its sole cost, to serve all customers within the service area. The provision that governs the utility's responsibilities to install service connections in rural areas (Tariff Rule 16.A.1.a.(2)) does not stand alone, however. It expressly refers back to the previous, more complete description of the utility's responsibilities to install service connections in urban areas, a responsibility which excludes "temporary services and as otherwise provided in Rule No 15, Main Extensions" (Tariff Rule 16.A.1.a.(1)). Neither can these provisions defining utility responsibilities be read without considering the customer's responsibilities. Tariff Rule 16.A.2.b. expressly provides that the customer shall install its own piping so as to require the least extension of the main.

Main extensions can be expensive, and no less so in rural areas than in urban ones. We have no evidence on what the cost of a main extension would have been in 1964, a cost that the customer avoided.<sup>11</sup> However, in the 1983 main extension decision, the Commission determined that in light of the

Tariff Rule 15, which has been a part of Garrapata's tariff since first filed in 1963, requires Commission approval of any deviations from its terms. Under Tariff Rule 15, a customer desiring a new, permanent service connection that requires a main extension of more than 50 feet may either elect to arrange for installation of the main extension or may request that the utility build it. In the latter situation, the customer must advance the estimated costs of construction. In either case, the customer receives an offset for the cost of the first 50 feet and thereafter, is entitled to refunds as other customers interconnect with the new main. The valve of the new main is non-taxable and does not go into ratebase. However, where revenues will be insufficient to make the main extension a viable capital addition, the advances usually are treated as "contributions in aid of construction," or CIAC, and accordingly, the customer receives no refund.

constrained finances of very small water companies like Garrapata, customer funds which had been advanced under two defective main extension contracts in the mid-1970s should not be refunded. The Commission rebuked the utility for its role in signing the defective contracts but declined to order refunds to the customer. Rather, the Commission held that the funds advanced should be accounted for as nonrefundable contributions of the plant facilities necessary to serve the customers' properties, reasoning:

"Otherwise, an excessive burden would result for defendant's [other] customers. Very small water companies are by their nature uneconomical. Any return on rate base is problematical and sufficient cash flow to make refunds on main extension contracts is seldom present. Defendant is no exception. Clearly, the extension itself, serving only a few customers, would not develop nearly enough revenue to be self-supporting." (1983 main extension decision, mimeo. at 7.)

The record in this case does reflect that Layne and Fisch had preliminary communications, at different times, with the California Department of Transportation (CalTrans) about installation of a main underneath the Highway 1 bridge that spans Garrapata Creek. Their anecdotal testimony indicates that CalTrans most recently estimated the cost at several hundred thousand dollars, though it is not evident that a formal estimate has ever been requested.

The parties' testimony and briefs focus extensively upon the locations of the various meters, and their accessibility or inaccessibility to one party or the other. We do not discuss this opposing testimony in further detail because we conclude it misses the mark. Noncompliance with the main extension limitations in Tariff Rule 16 (and the requirements of Tariff Rule 15)

does not convert this nonstandard water line into either a water main or a private service line.

We are troubled that Garrapata has taken no steps to formalize responsibility for ownership and repair of the water line over nearly four decades. Garrapata itself produced Ex. 103, a 1970 letter from the Commission's Executive Director to Garrapata's former, absentee ownership which lists 15 separate problems identified by Commission staff in the course of a water system field trip in June of that year. The problems range from questionable service connections (several are noted as being unmetered) to leaks and other plant repair concerns. Item number 10 explicitly notes the existence of what was then a ¾-inch line crossing Garrapata Creek to serve the property Fisch now owns. We need not rely on Garrapata's attempt to introduce circumstantial evidence that the water system was in some disarray before Morris acquired it--Ex. 103 establishes that fact directly. But that fact does not avoid, let alone answer, the question before us: who should pay for repairs to the nonstandard water line that presently crosses Garrapata Creek?

Generally, operations and maintenance expenses incurred by a utility in making repairs to its plant are factored into the annual revenue requirement recovered from all customers in rates. We see neither legal grounds nor equitable ones for deeming the entirety of this nonstandard water line to be utility plant and thereby imposing the full, annual cost of repairs on Garrapata's customers through the rates they pay. Approximately half of the water line (to the midpoint of Garrapata Creek) is on Fisch's property; thereafter it crosses land she does not own. The record does not reflect whether anyone holds an easement for the water line route between the southern border of Fisch's property and the point, further south, where it enters the utility easement that parallels Highway 1.

On balance, we conclude the evidence presented in this case warrants assigning responsibility for the outstanding bill of \$396.39 and for the costs of future repairs equally between Fisch and Garrapata. As a public utility, Garrapata is charged to provide reasonable service within its service area and therefore, we conclude that Garrapata should perform any needed repairs to the water line, or contract for their performance. Repairs should be made as quickly as reasonably can be arranged, considering the location of the water line, in order to limit the time Fisch is left without water when damage to the water line necessitates shutting off water to her property. Fisch shall provide Garrapata or its agent reasonable access to her property for the purposes of locating damage and making repairs. Once the repairs have been completed, Garrapata shall bill Fisch for one half of the cost of the repairs. The remainder shall be a utility liability, which Garrapata shall not recover from its ratepayers in rates or separate assessments. In subsequent GRC applications, Garrapata shall separately itemize the costs of any repairs to the water line and shall exclude them from the annual utility expense calculations required to support a request for a rate adjustment.

In addition, we direct Garrapata to prepare a preliminary study of the feasibility of extending its Highway 1 main across Garrapata Creek and to submit the study to the Commission's Water Division within six months of the effective date of this decision. The study shall report the number of potential service connections, in addition to the Fisch property, and the status of existing fire protection north of Garrapata Creek as well as any other information which the Director of the Water Division shall require. In an effort to reduce speculation, we direct Garrapata to request, in writing, from CalTrans a formal cost estimate for all work on the Highway 1 bridge associated with such a main

extension. Garrapata shall provide a copy of its request to the Director of the Water Division and shall include CalTrans' response in its preliminary study.

Nothing in this decision assigns any responsibility for funding the costs of any future main extension to Garrapata or to any of its present or future customers.

## **Findings of Fact**

- 1. Garrapata was permitted to present its defense at evidentiary hearing in the manner it chose within the timeframe it requested.
- 2. By its own admission, Garrapata has provided water to the Fisch property since 1964; the original house on Fisch's property was built in 1965.
- 3. Garrapata's acknowledged 1962 service area boundary undisputedly passes through Fisch's house.
- 4. A hand drawn, red pencil line delineates the service area border on Garrapata's current service area map, filed in 1986 as Sheet 96-W. The Fisch property is entirely within that red line, in the northwest corner of the service area.
- 5. On Sheet 96-W and on the prior service area map (filed in 1983 as Sheet 94-W) the tract of land in the northwest bears a unique cross-hatching which also appears in Ex. 107. The Ex. 107 legend describes this cross-hatching as representing an "area being served, but not filed."
- 6. Review of the cancelled tariff sheets archived at the Commission does not reveal that Ex. 107 ever was filed as a service area map.
- 7. Garrapata has produced no written agreement to establish the existence of an extra-service territory service arrangement nor is such an arrangement noted anywhere in the utility's tariff, in any advice letter, or in any Commission decisions concerning Garrapata. No former tariff schedule established a metered

rate for customers outside the service area, nor is there a flat rate for such customers now. Garrapata's Tariff Rule 4 requires a contract for service under non-standard rates or conditions.

- 8. The photograph in Ex. 5 shows a cement meter box which appears to be resting above ground on a downward slope on Fisch's property.
- 9. The Commission staff engineer's report of his inspection (Ex. 200) establishes that the meter box is not sited in the ground but rests over the top of a 1½-inch galvanized water pipe leading to Fisch's house. The location of the meter box is approximately 200 feet east of the house and about 50 feet west of the point where the 1½-inch galvanized water pipe intersects with the 1½-inch water line that comes up from Garrapata Creek. The meter box rests over a ¾-inch, nonfunctioning, brass, water meter which appears to be at least 25 years old and which has been in its present position for a considerable period of time. There are no valves at or in the vicinity of the meter.
- 10. The meter and meter box are not located at the point where the 1½-inch galvanized customer piping and the water line interconnect but 50 feet to the west, nearer Fisch's house.
- 11. The water line that drops down into the Garrapata Creek canyon and spans the creek bed is nonstandard.
  - 12. The water line serves only Fisch's property.
- 13. Approximately one half of the water line is located on Fisch's property (to the mid-point of Garrapata Creek); the rest is located on property Fisch does not own.
- 14. Because of the terrain of the Garrapata Creek area, at least half of the water line (all the pipe located in Garrapata Creek canyon) is not readily accessible to anyone.
  - 15. Flooding through Garrapata Creek routinely damages the water line.

- 16. The nonstandard water line is neither a water main nor a private service line.
- 17. Garrapata has taken no steps to formalize responsibility for ownership and repair of the water line over nearly four decades.
- 18. Approximately half of the water line (to the midpoint of Garrapata Creek) is on Fisch's property; thereafter it crosses land she does not own. The record does not reflect whether anyone holds an easement for the water line route between the southern border of Fisch's property and the point, further south, where it enters the utility easement along Highway 1.

#### **Conclusions of Law**

- 1. Garrapata's rights were not abridged when the ALJ adjourned the evidentiary hearing at 3 p.m.
- 2. For the reasons discussed in this decision, Garrapata's Ex. 102, Ex. 104, and Ex. 106 should not be received in evidence.
- 3. Garrapata's Ex. 105 should be received in evidence solely as corroboration of other evidence that Garrapata's Highway 1 main ends south of the Garrapata Creek bridge on Highway 1.
- 4. Garrapata's Ex. 107 should be received in evidence solely for its circumstantial, explanatory value with respect to certain aspects of Garrapata's present and former filed service area maps, as discussed in this decision.
- 5. Admitting Ex. 105 and Ex. 107 does not require us to set aside submission of this case and request another round of briefs, since as we discuss in this decision, other, adequate means exist to protect the rights of the parties.
- 6. At least a portion of the Fisch property has been part of Garrapata's filed service area since the utility's formation.

- 7. The circumstantial evidence which supports the Laynes' testimony that service to the Fisch property began as an extra-service territory accommodation cannot substitute for the lack of any documentary proof.
- 8. Garrapata may not disavow, for the purpose of assigning greater responsibility to Fisch under Tariff Rule 16, the service area map filed in 1986 as Sheet 96-W.
- 9. The provisions of Tariff Rule 16 must be read together. The provisions that govern the utility's responsibilities to install service connections in rural areas refer back to the previous, more complete description of the utility's responsibilities to install service connections in urban areas, a responsibility which excludes "temporary services and as otherwise provided in Rule No 15, Main Extensions." The customer's responsibilities include installing piping so as to require the least extension of the existing main.
- 10. Tariff Rule 16 does not require the utility to extend its water main, at its sole cost, to serve all customers within the service area.
- 11. The water line does not comply with the Tariff Rule 15 main extension requirements incorporated in Tariff Rule 16.
- 12. The evidence presented in this case warrants assigning responsibility for the outstanding bill of \$396.39 and for the costs of future repairs equally between Fisch and Garrapata.
- 13. Garrapata should perform any needed repairs to the water line, or contract for their performance, and then bill Fisch for one half of the cost.
- 14. Neither legal grounds nor equitable ones warrant deeming the entirety of the nonstandard water line to be utility plant and thereby imposing the full, annual cost of repairs on Garrapata's customers through the rates they pay.
- 15. Garrapata, or its agent, should make repairs to the water line as quickly as reasonably can be arranged, considering the location of the water line, in order to

limit the time Fisch is left without water when damage to the water line necessitates shutting off water to her property. Fisch must provide Garrapata or its agent reasonable access to her property for the purposes of locating damage to the water line and making repairs.

- 16. Garrapata should prepare a preliminary study of the feasibility of extending its Highway 1 main across Garrapata Creek, as further discussed in this decision.
- 17. Nothing in this decision assigns any responsibility for funding the costs of any future main extension to Garrapata or to any of its present or future customers.
- 18. In order to provide certainty to the parties regarding the status of service to Fisch's property and responsibility for repair of the water line, this decision should be effective immediately.

#### ORDER

#### **IT IS ORDERED** that:

- 1. Ex. 102, Ex. 104, and Ex. 106 offered by Garrapata Water Co., Inc. (Garrapata) are not received as evidence in this proceeding. Garrapata's Ex. 105 and Ex. 107 are received for the limited evidentiary purposes discussed in this decision.
- 2. The property now owned by Carol Fisch (Fisch) is within Garrapata's service area but the nonstandard water line is neither a water main nor a private service line.
- 3. Garrapata shall perform any repairs to the water line needed in future, or contract for their performance, and then bill Fisch for one half of the cost of such repairs. Repairs shall be made as quickly as reasonably can be arranged, considering the location of the water line, in order to limit the time Fisch is left

without water when damage to the water line necessitates shutting off water to her property. Fisch shall provide Garrapata or its agent reasonable access to her property for the purposes of locating damage and making repairs. Once the repairs have been completed, Garrapata shall bill Fisch for one half of the cost of the repairs. The remainder shall be a utility liability, which Garrapata shall not recover from its ratepayers in rates or separate assessments.

- 4. Fisch shall pay Garrapata one half of the outstanding water line repair bill of \$396.39 and one half of any future repairs.
- 5. In subsequent GRC applications, Garrapata shall separately itemize the costs of any repairs to the water line and shall exclude them from the annual utility expense calculations required to support a request for a rate adjustment.
- 6. Garrapata shall prepare a preliminary study of the feasibility of extending its Highway 1 main across Garrapata Creek and shall submit the study to the Commission's Water Division within six months of the effective date of this decision. The study shall report the number of potential service connections, in addition to the Fisch property, and the status of existing fire protection north of Garrapata Creek as well as any other information which the Director of the Water Division shall require. Garrapata shall request in writing from the California Department of Transportation (CalTrans), a formal cost estimate for all work on the Highway 1 bridge associated with such a main extension. Garrapata shall provide a copy of its request to the Director of the Water Division and shall include CalTrans' response in its preliminary study.

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7. This proceeding is closed.

This order is effective today.

Dated April 10, 2001, at San Francisco, California.

# Appendix A

# **Exhibit 9**

(See CPUC Formal Files for Appendix A: Exhibit 9.)

## Appendix B

## Tariff Rule No. 16 (Excerpt)

#### SERVICE CONNECTIONS, METERS, AND CUSTOMER'S FACILITIES

#### A. General

- 1. Utility's Responsibility
  - a.
    - (1) In urban areas with dedicated front streets, rear service roads, or public utility easements the utility will furnish and install the service pipe, curb stop, meter and meter box at its own expense for the purpose of connecting its distribution system to the customer's piping, except for temporary services and as otherwise provided in Rule No. 15, Main Extensions. The service connection, curb stop, meter and meter box will be installed at a convenient place between the property line and the curb, or inside the customer's property line where necessary.
    - (2) In areas which do not have dedicated front streets, rear service roads, or public utility easements the utility will furnish and install the service pipe, curb stop, meter and meter box as above provided but at a convenient point on or near the customer's property except for service beyond the service area.
  - b. The service connection will determine the point of delivery of water service to the customer.
- 2. Customer's responsibility
  - a. Condition Precedent to Receiving Service

The customer as a condition precedent to receiving service shall:

- (1) Furnish and lay the necessary piping to make the connection from the service connection to the place of consumption and shall keep such piping in good repair in accordance with such reasonable requirements of the utility as may be incorporated in its rules herein.
- (2) Provide a main valve on the piping between the service connection and the point of customer use.

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- (3) Where service is rendered at or near the service area boundary for use beyond the service area, install, operate and maintain the facilities necessary to provide service.
- b. The customer's piping shall extend to that point on the curb line or property line of easiest access to the utility from its existing distribution system or requiring the least extension of the existing distribution main. The utility shall be consulted before installation thereof and its approval of location secured.

\* \* \*

(END OF APPENDIX B)